



IT IS ORDERED as set forth below:

Date: September 11, 2009

A handwritten signature in black ink, reading "Paul W. Bonapfel", is written over a horizontal line.

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:	:	
	:	
LARUE PAUL McKENZIE,	:	Case No. 09-78963-PWB
	:	
Debtor.	:	Chapter 7
	:	

**ORDER DENYING EMERGENCY MOTION TO
EXTEND THE AUTOMATIC STAY**

Mr. McKenzie filed this Chapter 7 case on July 22, 2009. This is the second case that Mr. McKenzie has filed this year. His previous Chapter 13 case, No. 09-65565, was filed on March 2, 2009, and dismissed on May 14, 2009 for failure to make payments to the Chapter 13 trustee.¹ Under 11 U.S.C. § 362(c)(3), the automatic stay of 11 U.S.C. § 362(a) terminates 30 days after filing of the case to the extent set forth in 11 U.S.C. § 362(c)(3)(A) unless the court

¹In the previous case, the Chapter 13 trustee also objected to confirmation because Mr. McKenzie had failed to attend the 11 U.S.C. § 341(a) meeting of creditors, failed to file a plan, and failed to provide copies of federal tax returns or a transcript as 11 U.S.C.A. § 521(e)(2)(A)(i) requires. Case No. 09-65565, Docket No. 10.

orders its continuation pursuant to 11 U.S.C. § 362(c)(3)(B).

11 U.S.C. § 362(c)(3)(B) permits the court to continue the automatic stay on motion of the debtor (or any other party in interest) after notice and a hearing “completed before the expiration of the 30-day period” upon a showing that the filing of the later case is in good faith.

On August 12, 2009, the debtor filed a “Motion to Extend Automatic Stay Beyond 30 Days.” [Docket No. 20]. Because Mr. McKenzie did not call the filing of the motion to the attention of the Court, the Court did not schedule a hearing on the motion with the 30-day period within which § 362(c)(3)(B) require the hearing to be completed. The existence of the motion came to the court’s attention at a hearing held on September 9, 2009, on the motion of HSBC Bank USA, N.A., for relief from the stay to foreclose its security deed on property known as 11747 Buckhead Valley Lane, Atlanta, Georgia. [Docket No. 13].

At the hearing, the court advised Mr. McKenzie that it had no authority to grant the motion because a hearing on the motion had not been, and could not be, completed within 30 days of the filing of his petition on July 22 as the statute requires and that, therefore, the court would deny the motion. The Court also explained to Mr. McKenzie that a party who requires expedited consideration of a matter must call that need to the attention of the Court. In response to Mr. McKenzie’s question as to whether he could file another motion, the Court explained that Mr. McKenzie could file any motion seeking relief available under the law,² but that the Court

²See Fed. R. Bankr. P. 9011(b) (Filing of a motion is certification that, to the best of the person’s knowledge, information, and belief, (1) it is not being presented for any improper purpose; (2) the claims are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.)

could not grant a renewed motion to extend the stay under § 362(c)(3) because the time for completing a hearing on continuation of the stay had expired. The Court has entered a written order denying the motion. [Docket No. 24].

Shortly after the hearing, Mr. McKenzie filed a motion [Docket No. 22] with contents identical to the motion that the Court had just announced it must deny. The only difference in the new motion from the previous one is that “Emergency Filing” is added to the title. Mr. McKenzie contacted chambers to advise the Court of the filing of the motion and to request an expedited hearing.

No reason exists for an expedited hearing on the new motion. Indeed, no hearing is required at all. The Court cannot extend the automatic stay because the time for doing so has expired. The Court cannot turn back the clock. Because there are no circumstances under which the court can grant relief to continue the stay in effect under 11 U.S.C. § 362(c)(3) to the extent that it has expired under that section, the court will not hold a hearing on the motion and will deny it.

It is, therefore, hereby **ORDERED and ADJUDGED** that the “Emergency Filing Motion to Extend Automatic Stay Beyond 30 Days” filed in this case on September 9, 2009 [Docket No. 22] be, and it hereby is **DENIED**.

The Clerk is directed to mail a copy of this Order to the Debtor, the Chapter 7 Trustee, and all parties in interest.

[End of Order]